

Note: Rule 408 discussions are redacted.

AQ Quan, Amanda T.
Noakes
To: Joshua Adam Engel

Inbox - Engel & Martin September 13, 2022 at 3:28 PM

Thanks again for taking the time to chat. And, thanks for the extension through Monday, September 19 for CWRU's discovery. [REDACTED]

[REDACTED] I'll take a look at the joint motion on case dates and protective order later this week, which we can aim to file early next week. Thanks again,

Amanda T. Quan | Ogletree Deakins
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AQ Quan, Amanda T. Inbox - Engel & Martin September 20, 2022 at 9:53 AM

RE: Noakes - CWRU Extension of Schedule [SETTLEMENT DISCUSSIONS]

To: Joshua Adam Engel

Good morning,

[REDACTED]

[REDACTED] I will confer on the protective order shortly.

Thanks,

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From: Joshua Adam Engel <engel@engelandmartin.com>
Sent: Tuesday, September 20, 2022 9:48 AM
To: Quan, Amanda T. <amanda.quan@ogletreedeakins.com>
Subject: Re: Noakes - CWRU Extension of Schedule

[Caution: Email received from external source]

Following up... OK? I am under the gun today.

Also status of protective order?

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 ENGEL & MARTIN

 **Joshua Adam Engel**
Re: Noakes - CWRU Discovery Issues
To: Quan, Amanda T., Cc: Anne Tamashasky

November 30, 2022 at 4:15 PM 
[Details](#)

Where are we on protective order

Joshua Adam Engel
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[See More from Joshua Adam Engel](#)

 Joshua Adam Engel
Re: Noakes -- CWRU Discovery
To: Quan, Amanda T., Cc: Anne Tamashasky

October 18, 2022 at 12:10 PM
 [Details](#)

Hi Amanda,

Following up...

1) Where are you on Protective Order?

2) Attached is the latest discovery in Word.



Noakes - CWRU
Third S...ts.docx

3) We have no opinion of the need for FERPA notifications — which just don't want to see production delayed of this reason. Not accusing CWRU of anything, but sadly *some* schools have used this as a tactic to delay responding to discovery. I also want to make sure that *only* student names/addresses and the like will be redacted. In some instances, schools have taken a broad interpretation of PII to redact almost everything. Not saying that is your intention, and we did fine in prior productions, but that is why we will need the protective order done asap.

4) In terms of depositions, we definitely will need Lutner, the hearing panel chair, and 30(b)(6) deponents on, the investigations described in the Amended Complaint, the Federal inquiries, and other investigations conducted by the school. We will work to agree on the precise topics as we get closer, but this is a start for scheduling purposes.

5) The most important thing at this time is for CWRU to provide objections to categories of documents so we can begin the Rule 37 process and determine by the end of next week whether we will need court intervention. While documents production can be rolling, please send written responses to the the outstanding and due discovery requests ASAP.

Thanks

Josh

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From: Joshua Adam Engel <engel@engelandmartin.com>
Sent: Wednesday, October 12, 2022 1:18 PM
To: Quan, Amanda T. <amanda.quan@ogletreeedekins.com>
Cc: Anne Tamashasky <tamashasky@engelandmartin.com>
Subject: Noakes - CWRU Document production

[Caution: Email received from external source]

Amanda,

I am still awaiting you proposed schedule for the production of documents. As indicated, you would provide me as soon as possible any objections to categories of documents so we can bring disputes to the attention of the Court as soon as practicable. We would like to finalize that schedule by the end of the week.

I am also awaiting what I hope are final comments on the protective order we have been working on.

Finally, please find attached a Third Set of Document Requests that relate to the Amended Complaint.

Josh

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ENGEL &

AQ

From: Quan, Amanda T. amanda.quan@ogletree.com 
Subject: RE: NOAKES - CWRU FAILURE TO PRODUCE DOCUMENTS
Date: November 18, 2022 at 11:54 AM
To: Joshua Adam Engel engel@engelandmartin.com
Cc: Anne Tamashasky tamashasky@engelandmartin.com

Thanks, Josh.

- 1) Yes, our intent is to begin producing documents on a rolling basis today (not sure it will be by close of business, but today). We have agreed that both parties will continue the same protocol as with production from the expedited discovery, i.e. personally identifiable information will be redacted, and documents marked confidential will be treated as such until we are able to finalize a protective order.
- 2) Yes, as we discussed just now, notice is being provided to Jane Roe and we are in the process of obtaining her signed consent. We will confirm once we have. I will check with the client on notifications to other students, but will not be able to get back to you by noon on that.
- 3) From our discussion, I understand it is not your intent to transform discovery requests into judicial orders or subpoenas, but rather, parties may still object and utilize the court process if there is a disagreement on the scope of discovery requested. I am attempting to revise the latest draft to reflect that now and will have it to you as soon as I complete my proposed edits.
- 4) As I mentioned during our call and above in point 2, we will confirm once we have the signed consent of Jane Roe; assuming we obtain her signed consent, then with her consent we would search her email account for the requested records.

Thanks,

Amanda T. Quan | Ogletree Deakins

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From: Joshua Adam Engel <engel@engelandmartin.com>
Sent: Friday, November 18, 2022 11:31 AM
To: Quan, Amanda T. <amanda.quan@ogletreedeakins.com>
Cc: Anne Tamashasky <tamashasky@engelandmartin.com>
Subject: Re: NOAKES - CWRU FAILURE TO PRODUCE DOCUMENTS

[Caution: Email received from external source]

Thanks for the conversation this morning.

- 1) My understanding from our conversation is that CWRU intends to start producing documents by close of business today. We have agreed to continue the protocol we previously used: (i) documents would be produced with personally identifiable information redacted; and (ii) if redactions were insufficient, then documents may be designated as Confidential and the parties will agree to not disclose pending the completion of a Protective Order we can submit to the Court.
- 2) I also requested that if you have not done so you immediately make the notifications



From: Joshua Adam Engel engel@engelandmartin.com 
Subject: Re: NOAKES - CWRU FAILURE TO PRODUCE DOCUMENTS
Date: November 18, 2022 at 11:30 AM
To: Quan, Amanda T. amanda.quan@ogletree.com
Cc: Anne Tamashasky tamashasky@engelandmartin.com
Bcc: [REDACTED]

Thanks for the conversation this morning.

1) My understanding from our conversation is that CWRU intends to start producing documents by close of business today. We have agreed to continue the protocol we previously used: (i) documents would be produced with personally identifiable information redacted; and (ii) if redactions were insufficient, then documents may be designated as Confidential and the parties will agree to not disclose pending the completion of a Protective Order we can submit to the Court.

2) I also requested that, if you have not done so, you immediately make the notifications contemplated by 34 C.F.R. 99.31(a)(9)(ii). We understand some reluctance to make disclosures in regards to witnesses, but we believe that immediate notifications should be made to students who are the subject of retaliation complaints and investigations by our client. You have indicated that Notice has been provided to Jane Roe and she will be signing a consent. Please think about providing such notice to the other students who have actually been the subject of investigations. If you are unwilling to do so, we may ask the Court for assistance. I have requested that you get back to me by noon.

3) We also discussed the Protective Order. You have promised to get back to me by noon. It appears the sole disagreement involves the "Order" language. As we discussed, the intention here is to preclude argument that FERPA protected materials may not be disclosed in discovery because the implementing regulations, 34 C.F.R. § 99.31(a)(9)(i), only allow disclosure "to comply with a judicial order or lawfully issued subpoena." In this view, discovery is not a "judicial order" or "subpoena." See e.g. *Metcalf v. Yale Univ.*, D.Conn. No. 15-cv-1696, 2017 U.S. Dist. LEXIS 21032, at *13 (Feb. 15, 2017); *Doe v. Yale Univ.*, 564 F. Supp. 3d 11, 20 (D.Conn. 2021). Asking the Court to include this language is consistent with the view that "FERPA does not prevent the disclosure of students' educational records in connection with discovery in a case." Metcalf 2017 U.S. Dist. LEXIS 21032, at *13.

4) Finally, previously we had disagreed about whether CWRU needs to search Jane Roe's email account for records in its custody and control. In light of her statements and positions in response to the subpoena ("Much of this information can be provided by the school"), it seems that any searches for responsive documents must include her account. Based on our later conversation, it appears that you will be doing so. Please let me know by close of business today if you disagree.

Thanks

Josh

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On Nov 18, 2022, at 7:42 AM, Quan, Amanda T. <amanda.quan@ogletree.com> wrote:

I can discuss at 10 a.m. I'll call you at 10 a.m. Thanks,

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From: Joshua Adam Engel <engel@engelandmartin.com>
Sent: Friday, November 18, 2022 6:29 AM
To: Quan, Amanda T. <amanda.quan@ogletreedeakins.com>
Cc: Anne Tamashasky <tamashasky@engelandmartin.com>
Subject: NOAKES - CWRU FAILURE TO PRODUCE DOCUMENTS

[Caution: Email received from external source]

Please see attached correspondence. I am available to discuss before 7:15 today and between 9:00 and 10:30.